

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Criminal No. 2:11-cr-20129

Honorable Robert H. Cleland

vs.

D-33, SALVATORE BATTAGLIA,

Defendant.

PRELIMINARY ORDER OF FORFEITURE

The United States filed an Application for Entry of Preliminary Order of Forfeiture (“Application”) seeking a forfeiture order pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c) and Fed.R.Crim.P. 32.2, based upon Defendant Salvatore Battaglia’s violation of 18 U.S.C. § 922(g)(3), as alleged in Count Forty-Three of the Fifth Superseding Indictment. The Application seeks an order for the disposition of certain firearms, ammunition and other miscellaneous seized assets consistent with the terms of the Rule 11 Plea Agreement (“Rule 11”) entered into by Defendant Salvatore Battaglia (“Defendant”).

Based upon the information contained in the Application, the contents of Defendant’s Rule 11, Defendant’s guilty plea to violating 18 U.S.C. § 922(g)(3), Defendant’s agreement to forfeit property pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), and other information in the record, **IT IS HEREBY**

ORDERED, ADJUDGED AND DECREED THAT:

1. Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c) and Fed.R.Crim.P.

32.2, property used or involved in Defendant's violation of 18 U.S.C. §

922(g)(3), including, but not limited to, the following property (hereinafter

collectively referred to as the "Subject Property") **IS HEREBY**

FORFEITED to the United States for disposition in accordance with the

law, and any right, title or interest of Defendant in such property **IS**

HEREBY AND FOREVER EXTINGUISHED:

1B	ITEM	DATE SEIZED/ FIRE DATE	SEIZED FROM	SEIZURE LOCATION
1263	Astra Double Barrel Shotgun, Model Bounty Hunter, S/N 19-03-041-98, 12-gauge	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1264	Two 12-gauge shotgun shells removed from 12-gauge Astra shotgun (1B263)	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1265	Glock Pistol, Model 17, S/N XE743, 9mm	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1266	One Magazine for Glock, Model 17	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1267	14 Rounds of 9mm ammunition removed from 9mm Glock handgun (1B 1265)	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1268	Smith & Wesson Revolver, Model 642-2 Airweight, S/N CHA4576, .38 caliber	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1269	Four .38 caliber rounds removed from Smith & Wesson Revolver (1B 268)	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI

1270	Stevens Rifle, Model 66, No S/N, .22 caliber	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1271	Partial box of Winchester 0.22 rounds	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1272	19 Rounds of unknown caliber ammunition in zip lock bag	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1273	2 Boxes of Remington .44 caliber ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1274	2 Boxes of Remington .44 caliber ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1275	One box of Wolf .223 caliber ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1276	One .22 caliber Magazine	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1278	Ten rounds of .40 caliber ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1279	Nine Winchester .308 caliber rounds	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1286	Five 7.62 x 39mm rounds ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1287	One Magazine	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1288	Seven .45 caliber rounds ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1294	Miscellaneous ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1296	One box containing 5 boxes HSM 0.44 mag rounds	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI

1297	Bag containing numerous rounds of miscellaneous ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1298	Bag containing numerous rounds of miscellaneous ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1299	Three 20-gauge Remington slugs	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1304	Miscellaneous ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1305	Gun components: banana clip, three magazines, rear gun sight	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1308	Two Magazines	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1309	Three boxes of Wolf 9mm luger ammunition (50 cartridges each) and two bullets	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1323	Ammunition can containing 16 boxes of 7.62 x 39mm ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1324	Ammunition can containing 16 boxes of 7.62 x 39mm ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1325	Ammunition can containing 5 unopened boxes of unknown ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1326	Ammunition can containing 14 boxes of 7.62 x 39mm ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1327	Ammunition can containing 6 unopened boxes of ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI
1328	Ammunition can containing 13 boxes of 7.62 x 39mm ammunition	6/25/2012	Salvatore Battaglia	3455 Kilgore Road, Avoca, MI

2. There is a sufficient nexus between the Subject Property and Defendant's violation of 18 U.S.C. § 922(g)(3) (Count Forty-Three, Unlawful Drug User in Possession of Firearms and Ammunition), and therefore, the Subject Property is forfeitable to the United States pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c).
3. This Order shall become final as to Defendant at the time it is entered.
4. The forfeiture of the Subject Property shall be made part of Defendant's sentence and included in Defendant's Judgment, and this Preliminary Order of Forfeiture shall be incorporated by reference in the Judgment.
5. Upon entry of this Preliminary Order of Forfeiture, the United States Attorney General or his designee is authorized to commence any applicable proceeding to comply with the statutes governing third party rights, including giving notice of this Order.
6. Pursuant to 21U.S.C. § 853(n), the United States shall publish notice of this Preliminary Order of Forfeiture and of its intent to dispose of the Subject Property in such manner as the Attorney General may direct on www.forfeiture.gov for at least thirty (30) consecutive days. Said notice shall direct that any person, other than the Defendant, asserting a legal interest in the Subject Property, may file a petition with the Court within thirty (30) days of the final publication of notice or of receipt of actual

notice, whichever is earlier. The petition shall be for a hearing before the Court alone, without a jury and in accordance with 21 U.S.C. § 853(n), to adjudicate the validity of the petitioner's alleged interest in the Subject Property. Pursuant to 21 U.S.C. § 853(n), any petition filed by a third party asserting an interest in the Subject Property must be signed by the petitioner under penalty of perjury and must set forth the nature and extent of the petitioner's alleged right, title or interest in the Subject Property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the Subject Property, any additional facts supporting the petitioner's claim, and the relief sought. Pursuant to 21 U.S.C. § 853(n), the United States may also, to the extent practicable, provide direct written notice to any person or entity known to have an alleged interest in the Subject Property.

7. The United States is hereby authorized, pursuant to 21 U.S.C. § 853(n) and Federal Rules of Criminal Procedure 32.2 (c), to conduct any discovery in the ancillary proceeding in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is proper and desirable.
8. Pursuant to 21 U.S.C. § 853(n), following the Court's disposition of any petitions for ancillary hearing, or, if none, following the expiration of the period provided in 21 U.S.C. § 853(n) for the filing of third party petitions,

the United States shall have clear title to the Subject Property, all other interests in the Subject Property shall be FORFEITED to the United States, this Order shall become the Final Order of Forfeiture as provided by Federal Rule of Criminal Procedure 32.2(c)(2), and the United States shall be authorized to dispose of the Subject Property as prescribed by law.

9. Defendant shall not contest, or assist anyone else in contesting, the forfeiture of all of the firearms, silencers and ammunition, U.S. Currency, motorcycles, slot machines, tools, computers, thumb drives, laptops, cameras, monitors, electronic equipment, “Colors” including but not limited to center wheel, vests, pins and patches, clothing, merchandise, jewelry, paraphernalia, and other personal property bearing any Devil’s Diciples’ labeling, markings, logos or symbols, that were seized in connection with the investigation of this case, as well as those seized in connection with the investigation and prosecution of *United States v. Jeff Garvin Smith, et. al.*, Case No. 11-20066, United States District Court, Eastern District of Michigan, in any forfeiture action or proceeding.
10. Defendant shall not contest, or assist anyone else in contesting, the forfeiture of the real properties that are the subject of the following civil actions: *United States v. One Parcel of Real Property Known as 43653 Gratiot, Clinton Township, Michigan*, Case No. 09-cv-11208 and *United*

States v. One Parcel of Real Property Known as 2424 Little Street, Port Huron, Michigan, Case No. 09-cv-11212, United States District Court, Eastern District of Michigan.

11. Defendant shall not contest, or assist anyone else in contesting, the forfeiture of all Devil's Diciples' websites, markings, service marks, trademarks, names and "Colors," in any forfeiture action or proceeding.
12. Defendant shall not contest the forfeiture of, or file a petition or claim in connection with, any property that the government seeks to forfeit from any other defendant in this case, and from any defendant in *United States v. Jeff Garvin Smith, et. al.*, Case No. 11-20066, United States District Court, Eastern District of Michigan.
15. The Court retains jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Federal Rule of Criminal Procedure 32.2(e).

IT IS SO ORDERED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated:

May 18, 2016

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, May 18, 2016, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522